

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

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JAN 27 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Communications Assistance for)
Law Enforcement Act)

) CC Docket No. 97-213
)
)

REPLY COMMENTS OF PRIMECO PERSONAL COMMUNICATIONS, L.P.

PrimeCo Personal Communications, L.P. ("PrimeCo")¹ hereby replies to comments filed in response to the Commission's *Further Notice of Proposed Rulemaking* the above-referenced proceeding.² PrimeCo primarily addresses issues raised in the comments submitted jointly by the Federal Bureau of Investigation and U.S. Department of Justice ("FBI/DOJ").³ For reasons discussed in comments submitted by industry and in these reply comments, the record in this proceeding demonstrates that the Commission should affirm J-STD025 as a "safe harbor" for carrier compliance with the Communications Assistance for Law Enforcement Act ("CALEA"), and the FBI/DOJ so-called "punch list" capabilities should be rejected in their entirety.⁴

¹ PrimeCo is the broadband A/B Block PCS licensee or is the general partner/majority owner in the licensee in a number of MTAs.

² *In the Matter of Communications Assistance for Law Enforcement Act, Further Notice of Proposed Rulemaking*, CC Docket No. 97-213, FCC 98-282 (released Nov. 5, 1998), 63 Fed. Reg. 63,639 (Nov. 16, 1998) ("FNPRM").

³ See FBI/DOJ Comments in CC Docket No. 97-213, filed December 14, 1998 ("FBI/DOJ Comments").

⁴ See generally, AirTouch Communications, Inc. Comments in CC Docket No. 97-213, filed Dec. 14, 1998; Bell Atlantic Mobile ("BAM") Comments in CC Docket No. 97-213, filed Dec. 14, 1998; BellSouth Corporation Comments in CC Docket No. 97-213, filed Dec. 14, 1998; Cellular Telecommunications Industry

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I. CONTRARY TO THE FBI'S CLAIM, THE COMMISSION'S DETERMINATION OF "REASONABLY AVAILABLE" INFORMATION UNDER SECTION 103 NECESSITATES CONSIDERATION OF COST FACTORS

FBI/DOJ assert that "reasonable availability" pursuant to CALEA Section 103(a)(2)'s requirements for call-identifying information "is a technical concept, not a financial one" and that "technical considerations" such as network architecture "should determine whether particular call-identifying information is 'reasonably available.'"⁵ FBI/DOJ's interpretation of Section 103(a)(2), however, would effectively nullify Congress' imposition of a reasonableness requirement and would require the redesign of networks and equipment upgrades without regard to essential cost considerations.

All decisions regarding network infrastructure issues are, out of necessity, driven by cost and financial issues, and to suggest otherwise flies in the face of reality. Section 107(b) requires that Commission-imposed standards be "cost-effective" and "minimize the cost of such compliance on residential ratepayers."⁶ The FBI's interpretation would eviscerate the Section 107 safe harbor by requiring carriers to provide a particular Section 103 capability notwithstanding the Section 107(b) criteria.⁷ Furthermore, FBI/DOJ's suggestion presumes that "the carrier's network architecture [and] the

⁴ (...continued)
Ass'n ("CTIA") Comments in CC Docket No. 97-213, filed Dec. 14, 1998; Nextel Comments in CC Docket No. 97-213, filed Dec. 14, 1998; Personal Communications Industry Ass'n ("PCIA") Comments in CC Docket No. 97-213, filed Dec. 14, 1998; SBC Communications, Inc. Comments in CC Docket No. 97-213, filed Dec. 14, 1998; Telecommunications Industry Ass'n ("TIA") Comments in CC Docket No. 97-213, filed Dec. 14, 1998; U S WEST, Inc. Comments in CC Docket No. 97-213, filed Dec. 14, 1998.

⁵ FBI/DOJ Comments at 13-14.

⁶ 47 U.S.C. § 107(b).

⁷ See AirTouch Comments at 4-8; PCIA Comments at 9-10.

network elements where the information resides” are configured such that the information is already accessible.⁸

CALEA’s legislative history and the record in this proceeding, however, demonstrate that the FBI/DOJ interpretation improperly puts the proverbial “cart before the horse.”⁹ Congress expressly stated that “if [call-identifying] information is not reasonably available, the carrier does *not* have to modify its system to make it available.”¹⁰ Congress did not intend to require carriers to reconfigure their existing networks in order “to guarantee ‘one-stop shopping’ for law enforcement.”¹¹ FBI/DOJ’s “foray” into Section 109(b)(2)(A), in which it discusses standards for reimbursement of compliance costs and cost considerations under that provision’s “reasonably achievable” standard, disregards the plain language of Section 107.¹²

⁸ See FBI/DOJ Comments at 14.

⁹ See TIA Comments at 22. Indeed, as reflected in the J-Standard’s definition of “reasonably available,” networks are *not* always so configured. The J-Standard provides that “[c]all-identifying information is reasonably available if the information is present at an Intercept Access Point (IAP) for call processing purposes” and that “[t]he specific elements of call-identifying information that are reasonably available at an IAP *may vary between different technologies and may change as technology evolves.*” See JSTD-025 § 4.2.1 (emphasis added); CTIA Comments at 23.

¹⁰ See H.R. Rep. No. 103-827, at 22 (1994) (“House Report”) (emphasis added); see also 47 U.S.C. § 1002(b)(2)(B) (excluding “equipment, facilities, or services that support the transport or switching of communications for private networks or for the sole purpose of interconnecting telecommunications carriers” from capability requirements).

¹¹ See House Report at 22.

¹² See 47 U.S.C. § 1008(b)(2); FBI/DOJ Comments at 14-15.

II. COST INFORMATION IN THE PUBLIC RECORD COMPELS REJECTION OF THE FBI/DOJ PUNCH LIST ITEMS

FBI/DOJ contend that the FBI's "extensive consultations" with manufacturers "have not involved any significant sharing of cost information" ¹³ Apparently, however, FBI/DOJ have obtained information "significant" enough to recommend to Congress that it not move CALEA's January 1, 1995 grandfathering date for reimbursement with the claim that such an adjustment would cost \$2 billion. ¹⁴ Contrary to their claim, FBI/DOJ are therefore presumably in a position to provide *some* cost data in *some* form to enable the Commission to undertake its review of capability requirements.

Further, while FBI/DOJ purportedly "anticipate that carriers and other commenters will provide the Commission with their own estimates of" implementation costs, they also acknowledge that "manufacturers regard cost data as highly confidential proprietary information." ¹⁵ Given FBI/DOJ's unwillingness to disclose cost or pricing information, and the paucity of precise data from vendors, providing complete cost information is an impossible task for carriers. In this regard, and as vendors have apparently informed the FBI, the absence of precise financial information is due in part to the uncertainty concerning what precise features the FBI intends the punch list items to require. Vendors advise that under these circumstances it is difficult to know what these costs will be. Notwithstanding these limitations, the record reflects industry's under-

¹³ FBI/DOJ Comments at 16.

¹⁴ See Letter from CTIA *et al.* to Attorney General Janet Reno, December 4, 1998 ("December 4 CTIA Letter").

¹⁵ See FBI/DOJ Comments at 16.

standing that the magnitude of the costs of implementing “punch list” items will be very high.¹⁶

Despite industry’s reasonable request that FBI/DOJ provide *aggregate* data for purposes of this proceeding, FBI/DOJ advise that they “regretfully cannot disclose to the Commission *any* price information obtained from manufacturers.”¹⁷ It is particularly cynical that, having denied carriers and the Commission access to substantive cost information in their possession, FBI/DOJ further caution that “carriers have an obvious incentive to maximize the claimed costs of implementing CALEA’s assistance capability requirements and to minimize their professed ability to meet those requirements in a cost-effective manner.”¹⁸ PrimeCo respectfully submits that there is no basis for this statement.

In authorizing the Commission to resolve disputes over technical standards, Congress intended that the CALEA standards process be open and accountable.¹⁹ FBI/DOJ’s failure to share cost information clearly contravenes this legislative admonition. In any event, FBI/DOJ as the petitioners, must demonstrate that the punch list items would accomplish Section 103’s objectives in a cost-effective manner.²⁰ Because FBI/DOJ have failed to meet that burden and, because the financial data that *is* in the

¹⁶ See AirTouch Comments at 10; AT&T Comments at 27-29; BellSouth Comments at 4-6; CTIA Comments at 9; SBC Comments at 5-7; USCC Comments in CC Docket No. 97-213, filed Dec. 15, 1998, at 9-10; USTA Comments in CC Docket No. 97-213, filed Dec. 14, 1998, at 5-8.

¹⁷ FBI/DOJ Comments at 16 (emphasis added); December 4 CTIA Letter.

¹⁸ FBI/DOJ Comments at 17.

¹⁹ See House Report at 27.

²⁰ See 47 U.S.C. § 1006(b)(1).

public record indicates that the punch list items do not meet the Section 107 requirements, the Commission must reject the punch list items.

III. ANY NEW STANDARDS RESULTING FROM A REPORT AND ORDER IN THIS PROCEEDING SHOULD BE REMANDED TO TR45.2 AND NOT SUBJECT TO THE FBI/DOJ PROPOSED RESTRICTIONS

The Commission should reject the FBI/DOJ's proposed conditions on the standards process in the event that any of the punch list items are upheld.²¹ The Commission has appropriately determined that, should any of the punch list items be imposed on carriers, remand to TR45.2 would best facilitate the development of an expeditious, consensus-based final safe harbor standard. Once the revised standards are finalized, further review of the revised standard is unnecessary and implementation of the standard should be left to industry.²² Moreover, the FBI/DOJ proposal that "proposed technical standards from law enforcement" trump the TR45.2 process should be rejected outright. This ill-founded proposal contravenes CALEA's requirements that technical standards be industry-based and not dictated by government.²³

²¹ See *FNPRM* ¶¶ 129-32; FBI/DOJ Comments at 30-34.

²² PrimeCo also notes that the proposed 6-month period for promulgation of standards may be insufficient, *FNPRM* ¶ 133, and the FBI's proposed compliance deadline of 18 months from promulgation of standards will almost certainly be insufficient. See FBI/DOJ Comments at 29. Product development will take an additional 18-24 months after promulgation of standards, and carrier deployment and testing will take an additional several months. See AirTouch Comments at 27-28; CTIA Comments at 38-39; TIA Comments at 17-20; USCC Comments at 7-8; see also BAM Comments at 13 (noting competing network-related issues such as number portability, E911 and Y2K).

²³ See House Report at 22-23; see also BAM Comments at 3-4.

IV. INDIVIDUAL PUNCH LIST ITEMS AND FEATURES

PrimeCo generally agrees with commenters that the punch list items (1) go beyond the intention of Congress that CALEA preserve, rather than expand, law enforcement's preexisting capabilities; and (2) that the punch list items do not satisfy the requirements of Section 107(a) and, as the Commission has tentatively concluded, some do not fall under Section 103(a).²⁴ PrimeCo further agrees that the J-Standard should be affirmed as a final safe harbor standard. PrimeCo adds to the record the following additional brief comments regarding the FBI/DOJ proposed "surveillance integrity," and "delivery interface" requirements and also provides a brief caveat regarding "location information" capabilities.

A. Surveillance Status/Integrity

The Commission has tentatively and appropriately concluded "that the surveillance status punch list item is not an assistance requirement under Section 103."²⁵ FBI/DOJ oppose this conclusion on the basis that while it "does not contend that the specific surveillance integrity mechanisms proposed in the government's rulemaking petition are mandated by Section 103" that statutory provision "obligates carriers to take some affirmative steps to ensure surveillance integrity"²⁶

A carrier has an affirmative obligation under Section 103 to "ensure that its equipment, facilities, or services" subject to CALEA comply with the statutory capability

²⁴ See, e.g., AirTouch Comments at 11-28; AT&T Comments at 7-22; BellSouth Comments at 12-18; CTIA Comments at 20-37; PCIA Comments at 15-34; SBC Comments at 7-18; TIA Comments at 25-43; U S WEST Comments at 8-24.

²⁵ *FNPRM* ¶ 109.

²⁶ FBI/DOJ Comments at 58.

requirements.²⁷ That “affirmative obligation” is obvious and, indeed, the FBI/DOJ admission that Section 103 *does not* mandate its proposed requirements in itself should signal the end of the matter. Even assuming *arguendo* that carriers have a general “surveillance integrity” obligation, however, Congress did not intend that Section 103 be the mechanism by which such an obligation is enforced, and carriers are not required to implement the FBI/DOJ’s proposed “affirmative mechanism” — *i.e.*, a costly network modification — to comply with such an obligation.²⁸ CALEA’s enforcement provisions provide sufficient incentive for carriers to ensure compliance with Section 103. Furthermore, the record does not support the FBI/DOJ concern regarding surveillance integrity mechanisms.²⁹

B. The Commission Should Not Limit the Number of Delivery Interfaces

FBI/DOJ request that the Commission limit the number of interfaces to no more than five each for call content and call identifying information.³⁰ The Commission did not propose such a limitation in the *FNPRM* and should reject this proposal outright. FBI/DOJ appear to be “hedging their bets” under the assumption that CDMA, GSM, iDEN and TDMA will be the only digital air interfaces available to deliver digital services. As the Commission is aware, however, new digital standards are currently

²⁷ 47 U.S.C. § 1002(a).

²⁸ *Cf. A Re-Examination of Technical Regulations*, 99 FCC 2d 903, 910 (1984) (“responsibility to provide good quality service” does not necessarily “justif[y] direct regulation of technical quality” and “[r]esponsible conduct . . . need not always be mandated by quantitative regulation”).

²⁹ *See, e.g.*, AirTouch Comments at 23-25; CTIA Comments at 33; PCIA Comments at 18-22; TIA Comments at 37-39.

³⁰ FBI/DOJ Comments at 71.

under consideration in the IMT-2000 context.³¹ Congress did “not purport to dictate” the “design of the service or feature at issue” in imposing capability requirements and did not intend to discourage the use and development of new technologies.³² This FBI/DOJ proposal contravenes these legislatively-imposed parameters by discouraging the development of new services and technologies and should be rejected.

C. The Commission Should Not Rely Too Heavily on E-911 ALI Capabilities for Purposes of The Instant Proceeding

The Commission has tentatively concluded “that location information is reasonably available to telecommunications carriers” and, in this regard, cites to wireless carriers’ enhanced 911 (“E-911”) automatic location information (“ALI”) obligations.³³ FBI/DOJ cites approvingly to the Commission’s reliance on the E-911 requirement as a basis for requiring ALI.³⁴

The Commission’s reliance on the E-911 ALI requirements necessitates a significant caveat. First, the E-911 requirements apply “only if the administrator of the designated Public Safety Answering Point has requested the services . . . and is capable of receiving and utilizing the data elements associated with the service, and a mechanism

³¹ See *United States Welcomes EC Statement of Support for ITU Process on Setting New Mobile Telecommunications Standards*, FCC News Release, January 20, 1999.

³² House Report at 13, 22.

³³ *FNPRM* ¶ 56 (citing *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 18676 (1996), *recon.*, *Memorandum Opinion and Order*, 12 FCC Rcd. 22665 (1997)).

³⁴ See FBI/DOJ Comments at 76.

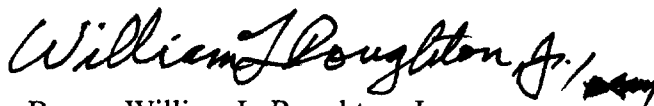
for recovering the costs of the service is in place.”³⁵ As the Commission is undoubtedly aware, some states continue to struggle with E-911 cost recovery issues, and not all PSAPs have requested E-911 services. While PrimeCo agrees with industry that the Commission’s interpretation of “ALI” for purposes of the instant proceeding — such that the J-Standard “covers only the location of the cell site, and only at the beginning and termination of the call” — is appropriate, the Commission should not presume that compliance with this requirement will not impose considerable costs on wireless carriers.³⁶

CONCLUSION

For the reasons discussed herein and in industry comments, the Commission should reject the punch list items in their entirety and affirm the J-Standard as a safe harbor.

Respectfully submitted,

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January 27, 1999

³⁵ 47 C.F.R. § 20.18(f).

³⁶ See *FNPRM* ¶ 54; AirTouch Comments at 32; PCIA Comments at 16, n.40; TIA Comments at 48-49;